

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,  
HON. ROBERT D. SACK,  
HON. PETER W. HALL,  
*Circuit Judges.*

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Juan Alberto Mori-Vasquez, Andres Alberto Mori,  
Juan Alberto Mori, Natividad Raquel Mori,<sup>1</sup>  
*Petitioners,*

v.

Nos. 04-1186-ag (L);  
04-1188-ag (con)  
NAC

Alberto R. Gonzales,<sup>2</sup> United States Attorney General,  
*Respondent.*

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<sup>1</sup>Because Petitioner Natividad Mori is now deceased, her appeal, docketed under 04-1188-ag, and all pending motions, are dismissed as moot. *See, e.g., Krantz v. United States*, 224 F.3d 125, 127 (2d Cir. 2000).

<sup>2</sup>Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 FOR PETITIONERS: Richard H. Zweig, New York, New York.

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3 FOR RESPONDENT: Patrick J. Fitzgerald, United States Attorney for the Northern  
4 District of Illinois, Edmond Chang, Chief of Appeals, Criminal  
5 Division, Craig Oswald, Christopher S. Niewoehner, Assistant  
6 United States Attorneys, Chicago, Illinois.  
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8 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of  
9 Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the  
10 petition for review is DISMISSED in part and DENIED in part.

11 Juan Alberto Mori-Vasquez, through counsel, petitions for review of the BIA decision  
12 affirming Immigration Judge ("IJ") Michael Rocco's decision denying his applications for  
13 asylum and withholding of removal. We assume the parties' familiarity with the underlying facts  
14 and procedural history of the case.

15 Where, as here, the BIA adopts and affirms the IJ in a brief opinion, we review the IJ's  
16 decision directly. *See Secaída-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003). We lack  
17 jurisdiction to review the IJ's factual determination that Mori-Vasquez' asylum application was  
18 not timely filed, and that he failed to establish changed or extraordinary circumstances justifying  
19 the late filing. *See* 8 U.S.C. § 1158(a)(2)(B), (a)(3); *Xiao Ji Chen v. U.S. Dep't of Justice*, 434  
20 F.3d 144, 151-54 (2d Cir. 2006). The asylum claim is therefore dismissed for lack of  
21 jurisdiction. Withholding of removal, however, is not subject to any filing deadlines, and the IJ's  
22 factual findings underlying the denial of that claim are reviewed for substantial evidence. *See*  
23 *Xiao Ji Chen*, 434 F.3d at 155-58. Under this standard, we treat these findings as "conclusive  
24 unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. §  
25 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). However,

1 we will vacate and remand for new findings if the agency’s reasoning or its fact-finding process  
2 was sufficiently flawed. *Cao He Lin v. U.S. Dep’t of Justice*, 428 F.3d 395, 406 (2d Cir. 2005);  
3 *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir. 2004); *see also Xiao Ji Chen*, 434 F.3d at 158  
4 (agreeing with this principle, but avoiding remand, in spite of deficiencies in an adverse  
5 credibility determination, because it could be confidently predicted that the IJ would adhere to  
6 the decision were the case remanded).

7 Substantial evidence supports the IJ’s conclusion that Mori-Vasquez failed to meet his  
8 burden of proving a clear probability of persecution in Peru based on his religious conversion.  
9 Mori-Vasquez admitted that he had not suffered any threats or harm in the past, and had not  
10 applied for asylum previously for that very reason. His family’s only circumstance that might  
11 arguably give rise to a threat of future harm was their conversion from the Catholic to the  
12 Methodist Church. The State Department report indicated that Peru was 98% Catholic, the  
13 Catholic religion received preferential treatment, and children were required to undergo Catholic  
14 religious instruction in school. However, the report also indicated that religious conversion was  
15 respected and that procedures existed to request alternative religious instruction in school. As  
16 neither Mori-Vasquez’s testimony nor the background materials suggested that his family faced  
17 any particular threat of harm on account of any protected ground, they failed to meet the high  
18 burden necessary to sustain a withholding claim. Finally, although Mori-Vasquez also addresses  
19 a claim for relief under the Convention Against Torture (“CAT”) in his brief, he never applied  
20 for CAT relief before the IJ. Moreover, even assuming we had jurisdiction to address this claim  
21 because the BIA did so implicitly, *see Xian Tuan Ye v. Dep’t of Homeland Security*, 446 F.3d  
22 289, 296-97 (2d Cir. 2006), that claim would clearly fail because Mori-Vasquez pointed to no

1 evidence to suggest there was any likelihood his family would be tortured in Peru.

2 \_\_\_\_\_For the foregoing reasons, the petition for review is DISMISSED in part and DENIED in  
3 part. Having completed our review, any stay of removal that the Court previously granted in this  
4 petition is VACATED, and any pending motion for a stay of removal in this petition is DENIED  
5 as moot. Any pending request for oral argument in this petition is DENIED in accordance with  
6 Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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8 FOR THE COURT:  
9 Roseann B. MacKechnie, Clerk

10 By: \_\_\_\_\_  
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